IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5682 OF 1997

Vasant Motiram Kadam.. .... Petitioner.
V/s
Dnyan Sadhana Shiksan Prasarak Sanstha & Ors... ... Respondents.

Mr.R.P.Lote, Adv. for the petitioner.

Mr.R.M.Hardas i/by M.P.N.Joshi, Adv. for the respondents No.1.

Mr.Ameya Tamhane i/by Ms.Seema Sarnaik, Adv. for respondent No.3

Mr.S.K.Chincholikar, AGP for respondent Nos. 4 & 5.

CORAM: A.P. DESHPANDE, J.
19.6.2007

PC:

The petitioner and the respondent No.3 are members of teaching staff in Madhyamik Vidyalaya, Gangapur which school is administered by respondent No.1. The service conditions of the employees working in private schools are governed by the Maharashtra Employees of Private School (Conditions of Services) Act and the rules made thereunder. The petitioner was appointed as assistant teacher on 31.7.1980 whereas respondent No.3 was appointed as assistant teacher on 17.7.1982. The petitioner belongs to open category whereas respondent No.3 belongs to schedule caste category of backward class. On occurrence of vacancy in the post of assistant Head Master in Madhyamik Vidyalaya respondent No.1 granted promotion to respondent No.3 as he was belonging to schedule caste category and aggrieved by grant of the said promotion the petitioner filed an appeal before the School Tribunal making a grievance that his claim to the promotional post had been wrongly superseded by appointing respondent No.3. The

petitioner had contended before the Tribunal that the post of assistant Head Master being isolated post cannot be subjected to reservation even by applying the roaster. Whereas respondent No.3 by filing reply/written statement before the Tribunal has, inter alia, contended that the respondent No.1 is administering as many as four schools and in all the four schools open category candidates are manning the post of Head Master. It is then submitted that the post of assistant Head Master falls in category B. It is then positively asserted that the post of Head Master in Mathoshree Gitabai Devram Patil Madhyamik Vidyalaya, Mahirawani, Madhyamik Vidyalaya, Vilholi and Post Basic Ashram Shala, Mahirawani also fall in category B of schedule F. On the basis of the above referred averments it was case of the respondent No.3 that there are four posts falling in B category and hence reservation is very much permissible in law.

2. Despite categoric averments made by respondent No.3, strangely enough the Tribunal does not even refer to the same and proceeds on the assumption that the post of assistant Head Master wherein respondent No.3 had been promoted is an isolated post. The Tribunal has ultimately concluded that even if post is isolated the said post can be subjected to reservation by applying the roaster. The said finding of the Tribunal is wholly unsustainable in law in view of the Constitution Bench Judgment of the Supreme Court in the case of ***Post Graduate Institute of Medical Education and Research, Chandigarh*** v. ***Faculty Association***, AIR 1998 SC 1767 equivalent to 1998 AIR SCW 1553 which goes to hold that the law declared in Dr.Chakradhar Paswan's case and Bhide Girls' Education Society's case is a correct view. In this view of the matter the judgment of the School Tribunal is patently illegal in as much as if the post is a single isolated post same cannot be subjected to reservation.

3. However, as stated herein above, the School Tribunal has not appreciated the case of respondent No.3 in its proper perspective. The respondent No.3 has been contending that there are some of the posts of Head in the schools administered by respondent No.1 which fall in category B of schedule F. But the School Tribunal has abruptly concluded that the posts

of Head Master fall in category A and assistant Head Master fall in category B. The said assumption of the School Tribunal is erroneous. Perusal of schedule F of MEPS Rules categories A and B would indicate that Head Master of school having enrollment of more than 500 falls in category A whereas Head Master of schools having enrollment below 500 fall in category B. It is thus clear that Head Masters of schools having less than 500 enrollment and assistant Head Masters constitute one cadre viz. Category B. The Tribunal has failed to consider the said subnmission in its proper perspective and has erroneously approached the issue. The fact finding in regard to the question as to how many posts are available in category B of Schedule F has to done by the Tribunal. Hence I am constrained to remand the matter back to the Tribunal. In the result impugned judgment and order passed by the Tribunal is quashed and set aside. The matter is remanded back to the Tribunal for consideration of the case of respondent No.3 referred to in the body of the judgment and more specifically pleaded in para 11 of the reply filed before the Tribunal. The Tribunal shall hear and decide the appeal afresh after affording opportunity to both the parties of being heard in the matter. Rule made absolute in above terms with no order as to costs. I hope and trust that the School Tribunal shall proceed to decide the appeal as expeditiously as possible and preferably within a period of six months from today.

19.6.07